

EMPLOYMENT ADVISORY COUNCIL
Minutes for June 28, 2006

DATE AND TIME: Wednesday, June 28, 2006

PLACE: Department of Workforce Services
140 East 300 South, Room 211B

MEMBERS

PRESENT: Tani Downing, Chair
James V. Olsen
John S. Chindlund
Greg Diven
Tony Montano
Eddie P. Mayne
Dan Peay
John Williams
Reta Oram
Mary Catherine Perry

OTHERS: Bill Starks, UI Director, DWS
Chris Love, Deputy Director, DWS
Jim Wilson, Legislative Analyst
Suzan Pixton, Attorney, DWS
Greg Gardner, Deputy Director, DWS
Kathy Prettyman, UI Chief of Benefits, DWS
John Smith, UI Chief of Contributions, DWS
Marvin Dodge, Chief Financial Officer, DWS

WELCOME AND INTRODUCTIONS

Tani Pack Downing welcomed the Council members and introductions were made.

COUNCIL MEMBERSHIP AND TERMS

Tani Downing said that there is not a good record of Council members' terms. Terms are typically four-year staggered terms. The members agreed to draw slips of paper to determine their terms. Terms can be renewed. They are as follows:

	Employer Representatives	Employee Representatives	Public Representatives
Term Ends			
6/30/2007	Richard Thorn	Steve Booth	Chyleen A. Arbon
6/30/2008	John S. Chindlund	Eddie P. Mayne	Lynne N. Ward
6/30/2009	Thomas E. Bingham	Dan Peay	Mary Catherine Perry
6/30/2010	James V. Olsen	Dave Wilson	Reta D. Oram
6/30/2010	Greg Diven	Tony Montano	John Williams

MINUTES

On motion by Eddie Mayne, second by Jim Olsen, the December 1, 2005 minutes were approved as submitted.

FOLLOW UP ON ACTION ITEMS

Bill Starks reviewed the follow up on action items.

1. *IRC 2006 Section 3306 Definitions.* Last year language was included to exempt student nurses and there was a question on whether medical interns should be exempted as well. Medical internship is basically the first year of residency after receiving a MD or OD. The federal exempt definition was adopted in the 1930s and there was little to distinguish between an intern and resident. It would be confusing to employers to exempt *interns* for one year and then cover them in subsequent years of their two to seven year residency program. Greg Devin asked if there would be confusion when the internship ended and residency started. Bill Starks said it's more a matter of labeling, noting that his staff contacted IHC, and they report all interns and residents for state and federal UI purposes even though there is an exemption in federal language.
2. *Employment Status of Mortgage Loan Officers:* Bill Starks reviewed the contents of the letter sent to Derek Miller, Real Estate Division Director and John Norman of the Mortgage Lenders Association. This letter was sent to the Council on March 30th and is included in the meeting packet. A motion was passed at the 12/30 Employment Advisory Council meeting directing DWS to send a letter to the Real Estate division indicating that it is DWS' position that under most circumstances, DWS would consider mortgage loan officers as working in covered employment for unemployment insurance tax purposes. The objective of the Council was to facilitate the exchange of information between the Unemployment Insurance and Real Estate divisions and hopefully better educate those involved in the mortgage industry.
3. Bill Starks said DWS was instructed to research to determine if an option existed for relieving an excessive tax burden on certain employers. Two briefing papers were sent to the Council in December. This will be discussed later in this meeting.

TRUST FUND UPDATE

Bill Starks reviewed the handout.

Page 1. UI Tax Rate Calculations and Explanations. This is included for the benefit of new members. Once an employer has been in business for one fiscal year it is eligible for a rate based on its own experience. He reviewed the formula for arriving at the overall rate. The social rate is benefit costs not attributable to any specific employer and thus shared by all employers. This rate is added to the UI tax rate of all employers and is the minimum tax rate available. Council members may contact Bill Starks for further explanation.

Page 2. Trust Fund Reserve Factor and Social Cost Calculation. This is good news. Two years ago, rates rose dramatically and the Trust Fund level was significantly down. At that time DWS projected it would be 2012 or beyond before it reached the minimum adequate level. Now, it is projected that in June 2006 the Fund will be \$520 million, within \$26 million of the minimum adequate level. The reserve factor is predicted to decrease from 1.25 in 2006 to 1.05 in 2007, which will provide significant relief to about 44% of the employers that have benefit costs. The social cost rate was calculated out several decimal points for rate years 2007 to 2008 on the handout for illustrative purposes. Bill Starks pointed out that the preliminary data showed that the projected minimum rate for 2007 is very close, it could be .4% or .3%, if the preliminary data stands the .0039505 calculation would result in the minimum rate equal to .3% because the overall rate is truncated at 3 decimal points by statute. However, for employers with benefit costs this would be largely irrelevant because the projected social cost of .0039 (truncated 4 decimal points by statute) is added to the employers benefit ratio. Jim Olsen said he had not known that there was a difference between employers. Bill Starks said that it is in statute. The trust fund projections are encouraging for all Utah employers.

Page 3. UI Trust Fund Balance Projections. Page 3 illustrates the Trust Fund's status. It is projected by the end of next year to reach the adequate reserve minimum. Claims levels are approximately half of what they were three years ago.

Page 4. Benefits Paid vs. Contributions Paid. Jim Olsen asked if there was a reason the benefits paid rose during the first quarter 2006. Chris Love said it typically spikes during the winter months due to seasonal jobs, adding that the fluctuations are probably not as dramatic because construction is more year round than it used to be, but it is still a factor.

Bill Starks noted that employer taxes are only used for paying benefits. Utah's average tax rate was about 20% lower than the national average for 2005, yet we pay higher than average benefits so it's really an accomplishment to have lower than average taxes when paying higher than average benefits and still maintain a fiscally sound Trust Fund. Mary Perry asked who determines the maximum/minimum adequate. Bill Starks said this is set by statute. It is essentially determined by looking at 5 of the most severe economic years during the past 25 years and then determining how much funds would be necessary to sustain the Trust Fund for 17 months (minimum) to 19 months (maximum) under such a scenario.

SOCIAL SECURITY OFFSET

HB 18. Bill Starks said until about two years ago Utah deducted 100% of the social security retirement benefits from a claimant's UI benefit amount. HB 8 of the 2004 General Session changed the law, and effective July 1, 2004 it was reduced to 50% with a three-year sunset provision. It was understood, but not written into the 2004 legislation, that costs associated with those benefits would be charged to the Reed Act Fund. Draft legislation is sent to the Department of Labor (DOL) to assure compliance and at that time, the DOL indicated that the legislation did not create any compliance and conformity issues. HB 18 of the 2006 Legislative Session extended the sunset for four additional

years. The language, missing from HB 8, stating that benefits would be charged to Reed Act was also put in statute. DWS received a letter from DOL dated May 22, 2006 stating that HB18 is out of conformity with federal law because of the charging provision. It says a state's risk must be tied to experience rating and Utah's noncharging provision disregards an employer's UI risk. Utah needs to either charge those employers who are responsible or revert to the 100% offset. Chris Love said DOL acknowledged that it had previously reviewed and approved the 2004 Legislation, but with a change of staff, the interpretation was different. Bill Starks said approximately \$921,000 has been charged to Reed Act. There isn't an expectation from DOL to charge employers retroactively, but this needs to be corrected. The majority of employers would have been charged if the offset hadn't been charged to Reed Act. He noted that as of January 2006, only Ohio, Puerto Rico and the Virgin Islands have a 100% offset, and Ohio has drafted legislation for a 50% offset for their 2006 legislative session. Greg Diven asked if any other states use the Reed Act. Bill Starks said he was not aware of any, but would check. Jim Olsen asked what are the repercussions if Utah doesn't come into compliance. Chris Love said there are serious potential consequences; the feds could raise the effective Federal Unemployment Tax Act (FUTA) rates to 6.2% from .8% because all Utah employers would lose the state credit of 5.4%. DOL has instructed us to fix it at the next session, and we want to comply. We need to go back to the 100% offset or not have this unique charging provision.

Jim Olsen reviewed the background of the social security offset. Utah received Reed Act money several years ago, the Council decided to split it with a portion to pay for some minor automation upgrades and then roughly ½ to the UI Trust Fund and ½ to enhance benefits, of which the social security offset was one, but with the understanding it would not penalize employers with benefit costs. Ed Mayne said that the Reed Act money was to take care of this benefit and asked what are we going to do with the benefit that we carved out. He asked if we are going to keep it so rates go down and keep it in the system. He said there is one state and two districts that still have 100% offset, nine have 50% and the rest have no deduction. Jim Olsen said if the law is changed, the \$400,000 will be recouped through higher tax rates to employers that are now charged, it is not coming out of federal funds. Bill Starks said the offset has had a negative impact to the Trust Fund; if it is charged back to the employer, it won't have negative impact on the reserve factor which may bring rates down for all employers with benefit charges. He added the cost of the benefit enhancement was substantially less than anticipated. Ed Mayne said it was several million dollars less, which is his point. He didn't think Utah would want to be the only state in the nation with a 100% offset. The Council looked at approximately \$62 million (Reed Act balance) and it was thought the benefit cost would be much higher. The cost is about 10% of what was projected at the time. Bill Starks noted the numbers were compiled under the premise that everyone who was working and retired would draw it. Additionally, unemployment rates were much higher, and the amount and duration of average benefits to this population is lower than projected. Ed Mayne said there are seniors who are forced back into the workforce to survive and they deserve no offset whatsoever. He said otherwise we need to find another benefit enhancement for the \$4 million.

Tani Downing said DWS is looking for guidance as to how to address the nonconformity. Ed Mayne said the Council would do what DOL says. The situation needs to be explained to the Legislature. Jim Olsen asked if there are there other ways to enhance benefits. Chris Love said he didn't see how an offset program could be charged without being reflected in premiums. Tani Downing said the alternative is state funding, and she doesn't see that as a possibility. Greg Diven asked how much additional premium does an employer have to pay. Bill Starks said it depends on taxable wages and how many employees are in that category. The smaller employer would be impacted more. Chris Love said the premise is that an employer repays the benefit cost with an increased tax rate. Over time, the employer would be expected to pay back the additional 50%. Ed Mayne said the issue is what UI is intended for. These are people working to make ends meet and probably for \$8-9 dollars an hour. He said hopefully we're coming full circle and a worker should be covered whether 70 or 20 years old. Greg Diven said the Council should look at the 50% offset and perhaps drop down to none. He has a concern about the small employer and maybe that could be offset some way if the Fund is in better shape. Bill Starks said the impact is neutral. He anticipates the Trust Fund will have a positive impact but it still goes to the issue of the small employer. Ed Mayne said the other issue is that we budgeted for the enhanced benefit in the amount of \$4.3 million a year and the impact has been about 10%. When the Council dealt with this issue we thought it would spend \$20 million and we haven't. If we end the benefit, then let's look at the other \$19 million in benefit. John Williams said the two main issues are complying with DOL's direction and what we can we do beyond that. Tani Downing said if the Reed Act language is removed, the offset will be charged to employers or it goes back to a 100% offset. Greg Diven said we have no choice but to make a change, but the 100% is not a viable option and should be 50% or no offset. John Williams asked if we want to be the only state with a 100% offset. Jim Olsen said he is not ready for a motion and the Council needs to look at other options.

Tani Downing asked Jim Wilson when this issue could be ready for a bill. He suggested to get it on a presentation--September is the best, October at the latest. This can be done informally with the intent communicated to the chairs. Tani Downing said we will have an Advisory Council meeting before that and present whatever decision the Council makes. Tani Downing said we will make an informal request that we need a bill, but don't know at this time what it will contain.

Tani Downing noted that Jim Olsen would like an opportunity to talk to other employer reps and that labor can think of other options for using Reed Act. Bill Starks said only 739 or 1 ½ % of employers who would have been charged benefit costs if the Reed Act allocation had not been in effect. Greg Diven asked if we could find out how many were small employers and wanted to know where the impact was going to hit. Chris Love said it also depends on a claimant's subsequent employment and the base period wages. Tani Downing asked what other information would the Council like. Mary Perry would like to know what other states are doing. Chris Love said we could ask the feds for a mechanism that any other states are using to offload benefit costs in relation to SS offset other than charging the Trust Fund. John Williams suggested checking with states that recently changed the offset. Bill Starks will look into that. John Chindlund asked how the offset

is charged to Reed Act. Chris Love said the offset is billed directly to the segregated Reed Act fund rather than the employer's account. The drawn down funds reduce the dollars in the Trust Fund. Greg Diven asked if the offset can be charged as a social cost. Bill Starks said it goes against the federal experience rating provision; social costs are typically costs that cannot be assigned to any particular employer. Tony Montano asked what are the benefits to the employers of having Reed money in the UI Trust Fund. Bill Starks said it lowers the Reserve Factor for all employers that have benefit costs. Greg Diven asked if it would help to ask those that looked at it from a federal level to review it again. Bill Starks will check on that again.

Tani Downing said DWS will research funding alternatives, look again at DOL's opinion, and the size of employers and open a bill file. An Advisory Council meeting will be held prior to Interim in September. Information will be sent out prior to the next meeting.

INTERIM STUDY 181 – UNEMPLOYMENT CONTRIBUTIONS BY CERTAIN CORPORATIONS

Bill Starks said a constituent of Sen. Allen precipitated this question. The constituent is a one-person corporation. He would like to retire and was told he wouldn't be eligible for UI. He wanted to know why he had to pay taxes if he would never be eligible. Bill Starks said under certain circumstances he would be eligible if actively looking for work. Federal law requires employers to pay FUTA on corporate officers. If a state exempts them, employers would have to pay the full 6.2% of the first \$7,000 of each employee's wages to the IRS with no. He referenced the handout outlining the consequences if corporate officers were excluded. Jim Wilson said for purposes of the Interim Committee, it was a retirement issue, not a UI issue and there was not an impetus from the committee to go forward. It will not be on the July agenda. Bill Starks requested a motion from the Advisory Council that it does not support changing state statute to exempt corporate officers.

Motion: The motion was made by Jim Olsen, seconded by Ed Mayne, not to change the current way that corporate officers are treated with a side note that it will hurt businesses if it is changed by increasing employers' federal taxes. Motion passed unanimously.

INTERIM STUDY #179, LIMITING UNEMPLOYMENT INSURANCE TAX RATE INCREASES

Bill Starks noted this was a continuation of Rep. Merlynn Newbold's discussion at a previous Council meeting. A constituent who was a small employer had a large layoff and when he subsequently increased his payroll significantly, his tax rate also increased significantly. The employer may end up paying substantially more, up to 3-4 times more in taxes over the next 3-4 years than the actual amount of benefit charges. The current tax formula was designed to increase an employer's tax rate over a four-year period sufficiently to recover approximately the amount of benefits charged to the employer's

account, provided the employer's payroll remains fairly similar in size in the year following the benefit charges. Bill Starks reviewed three options detailed in the handout.

Capping the rate increase would be a violation of federal law; it has to be based on uniform experience rating system. Utah caps the maximum rate, but does not limit the size of a rate increase in a year. John Chindlund asked if the employer could pay the rate until the amount was repaid. Bill Starks said five states with similar tax rate structures to Utah give employers the opportunity to buy back some of their benefit charges. Utah is a benefit ratio state and does not. At a previous meeting, Washington State's system was discussed. It requires a certain increase in one's tax rate before an employer can participate in the voluntary contribution. Only 12-13 employers out of 200,000 participate a year. He felt it probably could not be limited to just smaller employers, but it could be limited to employers with a certain increase. The more restrictive the participation, the less the negative impact to the UI Trust Fund. The impact is unknown until parameters are developed and employers actually participate. It may not be worth the administrative costs if only a handful of employers participate. Arkansas has a different rate structure and allows any employer to participate (about 800 do so annually). Utah's participation could potentially range from 10 to 800. John Chindlund said that over time most employers will equal out, but an individual employer may have an unexpected increase in employees. He said the buy-down option would cause the Trust Fund to lose money. Bill Starks said it would probably not be significant if it were designed to be fairly restrictive. Most of the cost would be in one time programming, not in ongoing costs. He added that DWS is neutral on this. Jim Wilson said Rep. Newbold would like to pursue this but wanted to look at a less expensive option if the fiscal note was a problem. Tani Downing asked if the Council should wait to see if she pursues it. The members expressed concerns with the impact to the Trust Fund, the cost for a system for a small number of employers, and abuse of the system. Greg Diven did not think a solution was needed, as there are other business options to solve the problem, including leasing employees and the use of temporary staffing companies. Jim Olsen asked if there was a way for a rate to be adjusted, rather than having a higher rate in such a scenario. Bill Starks said not under Utah's formula, but some states have a reserve ratio system. John Chindlund said if the objective is for complete payback, the system would have to work in the other direction as well, where an employer would repay the entire amount when a large number of employees were laid off.

Motion: The motion was made by Jim Olsen, seconded by Ed Mayne, to wait to see how Sen. Newbold proceeds before the Council addresses the issue. Motion passed unanimously.

ADMINISTRATIVE RULE CHANGES

Tani Downing said there was discussion on whether the Council would like to be apprized of UI rule changes. These are constantly updated. Jim Olsen said the question was whether this Council wanted that much detail when it meets on a quarterly basis, and if it should see changes before they are sent to Administrative Rules. Tani Downing suggested that the Council receive the rule change notices and contact her if members

feel it needs to be brought to the Council. Her concern is delaying rule changes when some are just technical. Jim Olsen said the Council should have the opportunity to discuss them.

Suzan Pixton gave an overview of the process of adopting or changing rules. The DWS Legal Issues Forum generally meets weekly and just completed a rewrite of many of UI's rules, which cleaned up antiquated language and provided more clarification. The rule is filed with the Division of Administrative Rules for review and published 15-days later, a 30-day comment period is given and 7 days before it can be passed as law. A public hearing can also be held. She said rules are sent to interested parties and the Council could certainly be added to that list. The Council could respond within the 30-day period for comment or, if necessary based on the Council's comment, meet for further discussion.

Decision: Council members will be on the distribution list to receive UI rule changes. If further clarification is needed, members can contact Bill Starks.

Tani Downing thanked the Council for its feedback and direction.

The meeting adjourned.